



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED (the Act)**

AND

**IN THE MATTER OF
BESRA GOLD INC.**

**ORDER
(SECTION 144)**

WHEREAS the securities of Besra Gold Inc. (the **Filer**) are subject to a temporary cease trade order made by the Director of the Ontario Securities Commission (the **Commission**) dated December 17, 2014 pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act and a further cease trade order issued by the Director of the Commission on December 29, 2014 pursuant to paragraph 2 of subsection 127(1) of the Act (together, the **Cease Trade Order**) directing that trading in securities of the Filer cease until further order by the Director;

AND WHEREAS additional cease trade orders were issued by the British Columbia Securities Commission on December 17, 2014, the Autorité des marchés financiers on January 5, 2015 and the Alberta Securities Commissions on March 30, 2015 (collectively, the **Additional Cease Trade Orders**);

AND WHEREAS notwithstanding the Additional Cease Trade Orders, the Filer has applied only to the Commission pursuant to section 144 of the Act for a partial revocation of the Cease Trade Order;

AND WHEREAS the Filer has represented to the Commission that:

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act* with a head office located in Auckland, New Zealand.
2. The Filer is a reporting issuer in Ontario, British Columbia, Alberta and Quebec. Ontario is the Filer's principal regulator.
3. The Filer's registered office is located at 366 Adelaide Street West, LL01, Toronto, ON M5V 1R9.
4. The Filer is a "venture issuer" as defined in National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)*. The Filer has a financial year ending June 30.

5. The Filer's authorized capital consists of an unlimited number of common shares (**Common Shares**) of which 378,781,274 Common Shares were issued and outstanding as of July 31, 2016. The Common Shares were traded on the Toronto Stock Exchange (**TSX**) under the symbol "BEZ". However, the TSX delisted the Common Shares effective October 17, 2014.
6. In addition to its listing on the TSX, the Filer was also listed on the Australian Securities Exchange (the **ASX**) under the symbol "BEZ" and traded on the OTCQX Bulletin Board, an over-the-counter market in the United States, under the symbol "BSRAF. Trading in the Common Shares on the ASX was suspended on October 10, 2014. The ASX subsequently removed the Filer from its official list as of the close of trading on August 31, 2015 and, accordingly, its securities are no longer traded on the ASX. The Filer was downgraded from the OTCQX Bulletin Board to the OTCQB Bulletin Board effective October 20, 2014 for failure to comply with OTCQX eligibility standards.
7. The Filer was required to file the following on or before September 29, 2014 (the **First Filing Deadline**):
 - (a) audited annual financial statements for the year ended June 30, 2014, as required by Part 4 of NI 51-102;
 - (b) management's discussion and analysis (**MD&A**) relating to the audited annual financial statements, as required by Part 5 of NI 51-102; and
 - (c) CEO and CFO certificates relating to the audited annual financial statements, as required by National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (collectively, the **First Required Filings**).
8. The Filer did not make the First Required Filings by the First Filing Deadline and has failed to file financial statements, MD&A or CEO and CFO certificates for any periods subsequent to the First Filing Deadline (the **Subsequent Required Filings** and, together with the First Required Filings, the **Required Filings**).
9. The Filer is not in default of any requirements of the Act or the rules and regulations made pursuant thereto, other than the failure to file the Required Filings.
10. The Filer was unable to make the First Required Filings because it did not have sufficient funds to engage its external auditor, Ernst & Young LLP, to perform an audit of the annual financial statements as required. The Filer has failed to make any of the Subsequent Required Filings also due to insufficient funds.
11. In addition to the Cease Trade Order and the Additional Cease Trade Orders, the securities of the Filer were subject to a Management Cease Trade Order dated October 10, 2014 issued by the Commission relating to the Filer's failure to file the First Required Filings.
12. There are no revocation applications currently in progress in any other jurisdictions as there are no trades contemplated to occur in such jurisdictions.

13. On March 5, 2015, the Commission ordered pursuant to section 144 of the Act, that the Cease Trade Order be partially revoked solely to permit the trades and acts in furtherance of trades in connection with a proposed private placement financing by the Filer for proceeds of up to \$15,000,000 (the **Previous Financing**). The Filer intended for the Previous Financing to raise sufficient funds to engage its auditors to audit the Required Filings as required by applicable securities legislation and to otherwise address any defaults of the Filer under securities legislation. The Filer closed a first tranche of the Previous Financing on April 7, 2015, resulting in gross proceeds to the Filer of \$2,000,000. Though the Filer anticipated closing the remaining of the Previous Financing, the proposed investor under the Previous Financing was unable to meet its obligations thereunder and no further funds were received by the Filer. The \$2,000,000 received by the Filer was insufficient to fully repay amounts outstanding to the Filer's auditors and to engage the Filer's auditors or another suitably qualified audit firm to rectify all defaults under securities legislation, while managing the Filer's dire working capital position, which necessitated the application of funds towards preserving assets and for operational purposes.
14. When it became clear to the Filer that the proposed investor under the Previous Financing would not be able to fulfill its commitments under the Previous Financing, and in light of the Filer's further deteriorating financial position, on October 19, 2015, the Filer filed a Notice of Intention To Make a Proposal under the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3) (the **BIA**). MNP Ltd. was named as the proposal trustee (the **Proposal Trustee**).
15. The purpose of the proceedings under the BIA was to facilitate the restructuring of the Filer's unsecured convertible and gold-linked notes and other unsecured indebtedness, totalling in the aggregate approximately \$71 million of obligations, and to otherwise provide stability to the Filer's business while the Filer, with the assistance of the Proposal Trustee, worked on formulating and presenting a viable proposal to creditors holding such indebtedness.
16. On January 29, 2016, the Filer lodged a proposal with the Proposal Trustee, which was in turn filed with the Office of the Superintendent of Bankruptcy.
17. On March 13, 2016, following discussions with its major unsecured creditors, the Filer lodged an amended proposal (the **Amended Proposal**) with the Proposal Trustee, which was in turn filed with the Office of the Superintendent of Bankruptcy.
18. On April 7, 2016, at the reconvened meeting of the creditors, the creditors of the Filer voted to accept the Amended Proposal in accordance with the approval requirements under the BIA.
19. On May 17, 2016, the Amended Proposal was approved by the Ontario Superior Court of Justice (Commercial List). As of July 31, 2016, 431 creditors have filed a proof of claim with the Proposal Trustee and, as such, are subject to the Amended Proposal.
20. In summary, the Amended Proposal offers the Filer's creditors the option of selecting one of the following four options:

- (a) Option 1 – to receive 3.25% of such creditor’s proven claim in cash and the remaining 96.75% in the form of a convertible note;
 - (b) Option 2 – to receive 70% of such creditor’s proven claim in Common Shares and the remaining 30% in the form of warrants to purchase Common Shares;
 - (c) Option 3 – to divide such creditor’s proven claim equally between Option 1 and Option 2; or
 - (d) Option 4 – a “convenience” cash payment equal to the lesser of \$3,000 and such creditor’s proven claim.
21. Each creditor may elect one of the above options by completing and submitting a creditor election form on or before the date on which all conditions of the Amended Proposal are satisfied and the Amended Proposal is implemented, failing which such creditor will be deemed to have selected Option 4.
22. Options 2 and 3 are subject to restriction on the number of Common Shares that can be issued to creditors electing such options. The total number of Common Shares so issuable shall not comprise more than thirty-three percent (33%) of the Common Shares following the Exit Financing (as defined below), on a fully diluted basis as to Common Shares (other than dilution from the conversion of convertible notes or warrants issued pursuant to the Amended Proposal or upon the conversion of any warrants issued pursuant to the Exit Financing). If the value of creditor claims electing Option 2 and 3 exceeds such limit, then the amount by which such creditor claims exceeds such limit will be automatically converted to Option 1 on a *pro rata* basis.
23. The closing of the transactions contemplated by the Amended Proposal is contingent on, *inter alia*, the completion of an exit financing resulting in proceeds to the Filer of not less than \$10,000,000 (the **Exit Financing**).
24. The Filer has entered into a commitment letter with Hedger Management SA (the **Proposed Investor**) pursuant to which the Proposed Investor may invest up to \$20,000,000 by way of one or more of secured convertible notes, preferred shares or similar instrument ranking in preference to the Common Shares as well as warrants to purchase Common Shares (the **Proposed Exit Financing**). The up to \$20,000,000 proposed investment consists of a committed first tranche in the amount of \$10,000,000 (the **Committed Tranche**) and two subsequent tranches of \$5,000,000, which subsequent tranches will be at the discretion of the Proposed Investor. The Filer will not close on any amounts under the Proposed Exit Financing unless the full Committed Tranche is received. The proposed valuation for the Proposed Exit Financing is such that a \$15,000,000 investment is expected to result in the issuance on an as-converted basis of 50.1% of the Common Shares of the Filer post-issuance.

25. The Filer intends to use the \$10,000,000 from the Committed Tranche as follows:

Cash settlements in relation to court approved creditors proposal for Besra Gold Inc.	\$2,200,000
Compliance & audit and associated professional fees	\$960,000
Payments to suppliers, management and staff	\$1,290,000
Bau Project & Malaysian Costs	\$2,000,000
Acquisition payments for Bau Project	\$2,500,000
Ongoing Working Capital	\$1,000,000
Applications to apply for a full revocation of all cease trade orders issued against the Filer	\$50,000
Total	\$10,000,000

26. The \$960,000 earmarked above for “compliance & audit and associated professional fees” and the \$50,000 earmarked above for “applications to apply for a full revocation of all cease trade orders issued against the Filer” will be immediately deposited upon closing of the first tranche of the Proposed Exit Financing into an escrow account with a third party escrow agent to be released only for such purposes.
27. The Filer contemplates closing the transactions contemplated by the Amended Proposal concurrent with the closing of the first tranche of the Proposed Exit Financing. As described above, depending on the elections made by the creditors in accordance with the options available to them, the Amended Proposal when completed will involve the issuance of convertible notes (pursuant to Option 1 and Option 3) and Common Shares and warrants (pursuant to Option 2 and Option 3).
28. If the Filer succeeds in receiving the funds from the Committed Tranche, the intention of the Filer is to remedy all defaults under securities legislation and to pursue the listing of the Common Shares on a stock exchange and in connection therewith, the Filer intends on engaging auditors to perform all audits required in connection with the Required Filings.
29. If the Filer succeeds in receiving the funds from the Committed Tranche, the Filer will have the necessary financial and human resources, including a reasonable number of directors and officers in place to address the defaults under the Required Filings in a timely and effective manner and comply with all other continuous disclosure requirements.

30. The Filer will pay all outstanding filing fees and participation fees owing and will apply for a full revocation of the cease trade orders in all jurisdictions within one-hundred-twenty (120) days of the completion of the first tranche of the Proposed Exit Financing.
31. The Filer has delivered an undertaking to the Commission to (i) place \$1,010,000 in escrow with a third party escrow agent immediately upon closing of the first tranche of the Proposed Exit Financing, and (ii) within one-hundred-twenty (120) days of the date of closing of the first tranche of the Proposed Exit Financing, bring itself back into compliance with its continuous disclosure obligations by filing all outstanding continuous disclosure documents that are required to be filed in all jurisdictions, paying all outstanding filing fees and participation fees owing, and apply for a full revocation of cease trade orders in all jurisdictions.
32. The Filer anticipates that securities issuable under the Amended Proposal will be issued pursuant to the "business combination and reorganization" exemption in section 2.11 of National Instrument 45-106 *Prospectus Exemptions* and that the securities issuable under the Proposed Exit Financing will be issued pursuant to the "accredited investor" exemption in s. 73.3(2) of the *Securities Act* (Ontario).
33. The Proposed Investor is at arms-length to the Filer. All of the 431 creditors subject to the Amended Proposal, except for six creditors, are at arms-length to the Filer. Such six creditors are each a "related party" of the Filer as such term is defined in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**). The claims of such related party creditors in aggregate amount to approximately \$1,577,040 or approximately 2.22% of the total quantum of claims subject to the Amended Proposal.
34. The Filer is exempt from the formal valuation and minority approval requirements of MI 61-101 pursuant to sections 5.5(a) and 5.7(a), respectively of MI 61-101. The Filer's board of directors has determined, acting in good faith, that neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transactions, insofar as it involves interested parties (as defined in MI 61-101), exceeds 25 per cent of the issuer's market capitalization.


AND WHEREAS considering the application and the recommendation of the staff of the Commission;

AND WHEREAS the Director being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED, pursuant to section 144 of the Act, that the Cease Trade Order be and is hereby partially revoked solely to permit the trades and acts in furtherance of trades that are necessary for and are in connection with the Amended Proposal and the Committed Tranche of the Proposed Exit Financing and all other acts in furtherance of the Amended Proposal and the the Committed Tranche of the Proposed Exit Financing that may be considered to fall within the definition of "trade" within the meaning of the Act, provided that:

- (a) prior to the completion of the Committed Tranche of the Proposed Exit Financing, the Filer will:
- (i) provide a copy of the Cease Trade Order to the Proposed Investor and to each creditor of the Filer under the Amended Proposal or such creditor's legal representative;
 - (ii) provide a copy of this order to the Proposed Investor and to each creditor of the Filer under the Amended Proposal or such creditor's legal representative; and
 - (iii) obtain signed and dated acknowledgements from the Proposed Investor and from each creditor of the Filer under the Amended Proposal or such creditor's legal representative, clearly stating that all of the Filer's securities, including the securities to be issued in connection with the Proposed Exit Financing and under the Amended Proposal, will remain subject to the Cease Trade Order until it is revoked, and that the granting of this order does not guarantee the issuance of a full revocation order in the future;
- (b) the Filer undertakes to make available copies of the signed and dated written acknowledgments referred to in paragraph (a)(iii) above to staff of the Commission on request; and
- (c) the order will terminate on the earlier of the completion of the Amended Proposal and 90 days from the date hereof.

DATED at Toronto, Ontario on this 17th day of October, 2016.


Michael Balter
Manager, Corporate Finance Branch
Ontario Securities Commission